

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

11	RICKY PHELPS,	)	Case No. 08cv2092-L (BLM)
12		)	
12	Movant,	)	<b>ORDER (1) GRANTING RESPONDENT'S</b>
13	v.	)	<b>APPLICATION TO FILE OPPOSITION</b>
13		)	<b>TO MOTION TO QUASH AND</b>
14	SOCIAL SECURITY ADMINISTRATION,	)	<b>SUPPORTING DECLARATION IN</b>
14	OFFICE OF THE INSPECTOR	)	<b>CAMERA, (2) DIRECTING THE CLERK</b>
15	GENERAL,	)	<b>OF COURT TO FILE THE OPPOSITION</b>
15		)	<b>AND DECLARATION UNDER SEAL, AND</b>
16	Respondent.	)	<b>(3) DENYING MOVANT'S MOTION TO</b>
16		)	<b>QUASH</b>
17		)	[Doc. Nos. 1 & 4]
17		)	
18		)	

Ricky Phelps, who is proceeding *pro se*, seeks to quash a Social Security Administration subpoena directed to Washington Mutual Bank, which requests documents from four of his bank accounts. Doc. No. 1. By order dated March 10, 2009, the district judge ordered Respondent to file a sworn response to Mr. Phelps' motion [Doc. No. 2] and Respondent did so on March 24, 2009 [see Doc. No. 4].

Having considered the arguments presented and all supporting documents submitted, and for the reasons set forth below, Respondent's application [Doc. No. 4] is **GRANTED** and Mr. Phelps' motion to quash [Doc. No. 1] is **DENIED**.

**LEGAL STANDARD**

Under the Right to Financial Privacy Act ("RFPA"), 12 U.S.C. § 3401 *et seq.* (1978), a financial institution may disclose a customer's financial records if such records are properly requested by a governmental authority via an administrative summons or judicial subpoena. 12 U.S.C. § 3402(2) & (4). If the customer objects to the disclosure of his financial records, he must file a motion to quash the summons or subpoena and timely serve the government entity with the motion. 12 U.S.C. § 3410(a); see also S.E.C. v. Jerry T. O'Brien, Inc., 467 U.S. 735, 745 (1984) (noting that "[a] customer's ability to challenge a subpoena [under the RFPA] is cabined by strict procedural requirements"). The motion must contain an affidavit or sworn statement confirming that the applicant is a customer of the financial institution and "stating the applicant's reasons for believing that the financial records sought are not relevant to the legitimate law enforcement inquiry stated by the Government authority in its notice, or that there has not been substantial compliance with the provisions of [chapter 35 of title 12]." 12 U.S.C. § 3410(a)<sup>1</sup>. If, as in this case, the Court orders the government authority to reply to the motion to quash, the government authority must file a sworn response. Id. at 3410(b).

In ruling on the motion, the court relies on the parties' sworn statements and any additional proceedings the court finds appropriate. Id. The RFPA directs the court to deny the motion if either the applicant is not the customer whose financial records are being requested or "there is a demonstrable reason to believe that the law

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<sup>1</sup> The RFPA makes clear that this procedure "constitute[s] the sole judicial remedy available to a customer to oppose disclosure of financial records" under this Act. 12 U.S.C. § 3410(e).

1 enforcement inquiry is legitimate and a reasonable belief that the  
2 records sought are relevant to that inquiry." Id. at 3410(c); Rodriguez  
3 v. Fed. Sav. and Loan Ins. Corp., 712 F.Supp. 159, 162 (N.D. Cal. 1989).  
4 "The ultimate burden of showing that the records sought are relevant to  
5 a legitimate law enforcement inquiry is on the government." In re  
6 Blunden, 896 F.Supp. 996, 999 (C.D. Cal. 1995) (quoting Collins v.  
7 Commodity Futures Trading Comm., 737 F.Supp. 1467, 1480 (N.D. Ill.  
8 1990)). "For purposes of an administrative subpoena, the notion of  
9 relevancy is a broad one." Sandsend Fin. Consultants, Ltd. v. Fed. Home  
10 Loan Bank Bd., 878 F.2d 875, 882 (5th Cir. 1989); S.E.C. v. Nicita, 2007  
11 WL 1704585, \*3 n.4 (S.D. Cal. June 13, 2007). An administrative agency  
12 with statutory authority to engage in investigative and accusatory  
13 duties may "investigate merely on suspicion that the law is being  
14 violated, or even just because it wants assurance that it is not." U.S.  
15 v. Morton Salt Co., 338 U.S. 632, 642-43 (1950).

#### 16 DISCUSSION

17 On or about November 2, 2008, the Social Security Administration,  
18 Office of the Inspector General, Office of Investigations ("SSA") sent  
19 Mr. Phelps a certified letter informing him that it intended to subpoena  
20 his financial records from Washington Mutual Bank. Pet. to Quash at 4.  
21 Mr. Phelps timely moved to quash the subpoena on November 12, 2008. See  
22 12 U.S.C. § 3410(a) (requiring a motion to quash an administrative  
23 subpoena or summons to be filed within ten days of service or fourteen  
24 days of mailing). In his sworn statement, Mr. Phelps confirms that he  
25 presently is a customer of Washington Mutual Bank and is the customer  
26 whose records are being requested by the SSA. Pet. to Quash at 1, 3;  
27 12 U.S.C. § 3410(a). He argues that the records sought are not relevant  
28 to a legitimate law enforcement inquiry because (a) he has not engaged

1 in illegal activity and (b) the SSA already has taken money out of his  
2 "SSI check" and cut off his "SSA check" completely. Pet. to Quash at  
3 2-3. He also states that he has a privacy right in his financial  
4 information, that he does not authorize anyone to access his financial  
5 records, and that he is merely saving money to improve his education and  
6 living standards. Id.

7 On March 24, 2009, the SSA filed an application for leave to file  
8 its opposition to Mr. Phelps' motion to quash, and a supporting  
9 declaration, *in camera* pursuant to 12 U.S.C. § 3410(b).<sup>2</sup> Doc. No. 4.  
10 For purposes of ruling on Mr. Phelps' motion to quash, the Court has  
11 reviewed *in camera* all of the submitted documents.

12 Turning to the merits of Mr. Phelps' motion, the Court must  
13 determine whether (1) Mr. Phelps is the customer whose financial records  
14 are being requested, (2) the law enforcement inquiry is legitimate, and  
15 (3) the records sought are relevant to the law enforcement inquiry. 12  
16 U.S.C. § 3410(c); Rodriguez, 712 F.Supp. at 162. The first prong of  
17 this test is satisfied because Mr. Phelps admits in his sworn statement  
18 that he is a customer of Washington Mutual Bank and is the holder of the  
19 four bank accounts in question. Mot. to Quash at 1, 3.

20 The next question is whether the SSA's law enforcement inquiry is  
21 legitimate. The RFPA defines a law enforcement inquiry as "a lawful  
22 investigation or official proceeding inquiring into a violation of, or  
23 failure to comply with, any criminal or civil statute or any regulation,  
24 rule, or order issued pursuant thereto." 12 U.S.C. § 3401(8). In this  
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27 <sup>2</sup> The SSA concurrently lodged with Chambers the opposition and declaration  
28 to be considered *in camera*. After reviewing the SSA's application and the documents  
lodged with Chambers, the Court **GRANTS** the SSA's application and **ORDERS** that the Clerk  
of Court file the opposition and supporting declaration under seal.

1 case, the inquiry is lawful because the Inspector General Act of 1978,  
2 as amended, authorizes the Office of the Inspector General (a) to  
3 initiate any investigations necessary to further proper administration  
4 of Social Security programs and (b) to serve subpoenas for records and  
5 other account information in furtherance of this goal. 5 U.S.C. app.  
6 3 § 6(a)(2), (4) (2008); see also 42 U.S.C.A. § 902(e) (1996) (providing  
7 for appointment of an Inspector General of the Social Security  
8 Administration in accordance with the Inspector General Act of 1978).  
9 Because the instant investigation relates to "the possible fraudulent  
10 or otherwise improper receipt and/or use of Social Security benefits"  
11 (Mot. to Quash at 5), the Court finds that the investigation falls  
12 squarely within SSA's statutory authority to investigate potential  
13 violations of the laws governing administration of Social Security  
14 programs. The Court, therefore, concludes that the subpoena issued to  
15 Washington Mutual Bank is part of a legitimate law enforcement inquiry.  
16 12 U.S.C. § 3410(c); Rodriguez, 712 F.Supp. at 162.

17 In regard to whether or not the subpoenaed records are relevant to  
18 the law enforcement inquiry, see 12 U.S.C. § 3410(c), the burden is on  
19 the SSA to make a sufficient showing, see In re Blunden, 896 F.Supp. at  
20 999. To satisfy this burden, the SSA submitted an Opposition to Motion  
21 to Quash Inspector General Subpoena and a declaration signed under  
22 penalty of perjury by Special Agent Sarah Miller. Having reviewed *in*  
23 *camera* the SSA's opposition and declaration, the Court concludes that  
24 the SSA has met its burden of demonstrating its basis for suspecting  
25 that Mr. Phelps has violated one or more laws and/or failed to comply  
26 with an applicable criminal or civil statute, regulation or order, see  
27 Morton Salt Co., 338 U.S. at 642, as well as a reasonable basis for  
28 believing that the subpoenaed records are relevant to determining

1 whether such violations have, in fact, occurred.

2 In sum, the Court concludes that the SSA's subpoena for Mr. Phelps'  
3 account records, held by Washington Mutual Bank, was issued as part of  
4 a legitimate law enforcement inquiry and seeks records that are relevant  
5 to that inquiry.

6 **CONCLUSION**

7 For the foregoing reasons, the Court **DENIES** Mr. Phelps' motion to  
8 quash.

9 **IT IS SO ORDERED.**

10 DATED: March 26, 2009

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12 BARBARA L. MAJOR  
13 United States Magistrate Judge  
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